

34701-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

LEONARD F. DAVISON, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENTS OF ERROR

1. The court erred when it denied the defendant's motion to suppress evidence based on a finding that there was a reasonable basis to continue investigation after the original traffic stop had been made.

2. Insufficient evidence supports the conviction for possessing a controlled substance and possessing a dangerous weapon.

II. ISSUES PRESENTED

1. Whether law enforcement had a reasonable basis to conduct an investigation of the defendant based on what was observed during the initial traffic stop?

2. Whether the evidence presented at trial established that the defendant had dominion and control over methamphetamine and a switchblade knife contained inside a bag found where the defendant had been sitting?

III. STATEMENT OF THE CASE

On January 3, 2016, at approximately 12:35 a.m., Deputy Amber Dawson of the Spokane County Sheriff's Office was on patrol with her assigned field training officer (FTO), Deputy Nathan Bohanek. RP 22. They were driving southbound on Argonne Road in Spokane County when they came across a vehicle, a Honda, known to Deputy Bohanek. RP 23. The registered owner of the vehicle, Kyle Phillips, was known to have a

suspended driver's license. *Id.* As the deputies followed the Honda, Deputy Dawson ran Mr. Phillips through various systems to determine if his license was still, in fact, suspended. *Id.* It was determined Mr. Phillips's license was suspended and the deputies stopped the Honda based on this information. RP 24, 86.

Deputy Dawson approached the driver of the Honda, while Deputy Bohanek and Deputy McQuitty (who happened to be on scene) went to the passenger side of the car. RP 24, 86. The driver, a male, provided Deputy Dawson a tribal identification and Deputy Dawson wrote down the driver's name. RP 86, 107-108. The driver told Deputy Dawson he did not have a license and could have warrants. RP 86, 107-108.

Contemporaneously, if not simultaneously, Deputy Bohanek (from his position by the passenger side of the car) noticed the ignition appeared to be torn apart. RP 24. The plastic cover over the steering column had been removed, the ignition mechanism was damaged or "punched," and no key was in the ignition. RP 25. In the deputy's experience, such damage was indicative of a possible stolen vehicle. *Id.* It was then that Deputy Bohanek heard the driver tell Deputy Dawson that he (the driver) did not have a license. *Id.* Deputy Bohanek then walked around the car to Deputy Dawson, saw she had written down the name of the driver, and took that name back to the patrol car to verify the driver's identity. RP 26, 86, 108. The driver

was identified as Donny Carson. RP 86, 108. Mr. Carson had a warrant for his arrest and also had a suspended driver's license. RP 26, 86, 108. Mr. Carson was arrested by Deputy Dawson. RP 27, 86.

After the arrest of the driver, Deputy Bohanek returned to the car to ask the passengers about its ownership. RP 27. There were two passengers in the vehicle along with the driver. RP 86-87. The rear passenger was a female, identified as Corrina Hendrickx. RP 87, 110. It was discovered Ms. Hendrickx had warrants for her arrest as well. RP 87, 110-11. Ms. Hendrickx was arrested by Deputy Dawson. RP 28, 87. The passenger in the front seat eventually was identified as Leonard Davison, the defendant. RP 30, 111. Mr. Davison also had a warrant for his arrest. RP 30. As Mr. Davison climbed out of the car to be taken into custody, Deputy Bohanek observed he had been sitting on a couple of items. RP 30, 87. The items were on the front seat, directly underneath where Mr. Davison had been sitting. RP 71. One of the items was a brown zippered pouch or bag, possibly a toiletry kit.¹ RP 46, 64. The other item was a digital camera. RP 64. Deputy Bohanek gave these items to Deputy Dawson. RP 87-88. Mr. Davison and the items were then transported to jail. RP 87.

¹ The brown pouch or bag (admitted into evidence at trial as Exhibit P-2) was not designated for transmittal to the Court of Appeals.

At the jail, the brown bag was opened and searched. RP 78. A white crystal substance was found inside.² *Id.* This substance was later determined to be methamphetamine.³ RP 35-39; CP 137. Also inside the bag was a spring-loaded knife.⁴ RP 88-97.

The defendant was charged in Spokane County Superior Court with one count of possession of a controlled substance - methamphetamine, and one count of dangerous weapon violation - possession of a spring-loaded knife. CP 1. Defense counsel moved to suppress the evidence against Mr. Davison, claiming, among other things, that the deputies exceeded the scope of the traffic stop by not ending the stop once the identity of the driver was determined to not be the registered owner. CP 18-22, 26. Judge Sam Cozza denied the motion, concluding:

2. That Deputy Dawson and Deputy Bohanek, after initiating the stop, had a reasonable basis to treat the stop as a *Terry* stop and investigate further.

² The bag containing the white crystal substance (admitted into evidence at trial as Exhibit P-1) was not designated for transmittal to the Court of Appeals.

³ The crime lab report identifying the white crystal substance found in the brown pouch as methamphetamine (admitted into evidence at trial as Exhibit P-4) was not designated for transmittal to the Court of Appeals. The defendant does not take issue with the nature of the controlled substance.

⁴ The spring-loaded knife (admitted into evidence at trial as Exhibit P-7) was not designated for transmittal to the Court of Appeals.

3. That the status of the damaged ignition established significant differences from *Penfield* that would have lead a reasonable person, under similar circumstances, to believe the vehicle in question may have been stolen, therefore the continued questioning of the driver and passengers was not unlawful.

CP 122-124. After a subsequent bench trial, Judge Linda Tompkins adopted and incorporated the conclusions made by Judge Cozza, and concluded herself that Mr. Davison was guilty of both charges. CP 166-168.

IV. ARGUMENT

A. THE COURT DID NOT ERR IN DENYING DEFENDANT’S MOTION TO SUPPRESS, AS LAW ENFORCEMENT HAD A REASONABLE BASIS TO CONDUCT AN INVESTIGATION BASED ON WHAT WAS OBSERVED DURING THE INITIAL TRAFFIC STOP.

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution protect the right of people to be free from unreasonable searches and seizures. *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). A warrantless seizure is per se unreasonable unless it falls into a narrow exception to the rule. *Id.* One such warrant exception is a brief investigatory stop. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). A *Terry* stop first requires a reasonable suspicion, based on objective facts, that a person is engaged in criminal conduct. *Id.* at 21-22; *State v. Garvin*, 166 Wn.2d 242, 250,

207 P.3d 1266 (2009). A *Terry* stop must be reasonably related in scope to the circumstances justifying the interference. *Williams*, 102 Wn.2d at 739.

Under RCW 46.20.349, a deputy may stop a vehicle registered to a person whose driver's license has been suspended. A report of a suspended license from the Department of Licensing (DOL) provides reasonable suspicion of criminal conduct sufficient to justify a *Terry* stop. *State v. Phillips*, 126 Wn. App. 584, 588, 109 P.3d 470 (2005). Mr. Davison argues the initial stop became unreasonable because Deputy Dawson exceeded the permissible *Terry* stop limits under *State v. Penfield*, 106 Wn. App. 157, 22 P.3d 293 (2001).

In *Penfield*, an officer conducted a traffic stop on a vehicle whose registered owner, a woman, had a suspended license. *Penfield*, 106 Wn. App. at 159. The officer immediately discovered the driver was a man. *Id.* Although the officer knew the driver could not be the registered owner, he nevertheless asked for the man's driver's license. *Id.* The driver told the officer his license was suspended. *Id.* The driver was arrested and methamphetamine was seized in a subsequent vehicle search. *Id.* It was held that once the officer determined the driver was not the registered owner of the vehicle, he had no other articulable suspicion of criminal activity justifying the request for the driver's license. *Id.* at 162. The court pointed out that "[o]ther facts may exist to create a suspicion that the driver may not

have the owner's permission to use the automobile or that the driver is engaged in some other criminal activity". *Id.*

Mr. Davison argues his case is like *Penfield* because Deputy Dawson "had no reason to ask Mr. Carson for his driver's license after he provided identification showing he was not Kyle Phillips, the registered owner." Br. of Appellant at 10. Unlike in *Penfield*, however, Deputy Dawson initially found a male driving the stopped vehicle, the same gender as the registered owner; it was not readily apparent that Mr. Carson, the driver, was not Mr. Phillips, the registered owner. Although Mr. Carson presented a tribal identification card to Deputy Dawson, it was reasonable for Deputy Dawson to then request Mr. Carson's driver's license to clarify his identity. CP 33. RCW 46.20.349 specifically allows an officer to request the driver's license of any person operating a vehicle that is registered to a person with a suspended license. Mr. Carson was unable to produce a driver's license, and he admitted his license was suspended and he thought he might have a warrant. CP 33. At this point, Deputy Dawson was justified in detaining Mr. Carson to investigate the status of Mr. Carson's driver's license via dispatch as well as check for warrants. RCW 46.61.021.

Independently from Deputy Dawson's inquiry, Deputy Bohanek developed a reasonable suspicion that the vehicle Mr. Carson was driving was possibly stolen. He observed the Honda had a damaged ignition and

steering column, and it looked like the car was running without a key in the ignition. CP 37. Even if this belief was never expressly relayed to Deputy Dawson, it provided Deputy Bohanek with a reason to continue an investigation. After the driver was arrested, this investigation led Deputy Bohanek to ask the passengers their names, which led to their arrest. CP 38. This supports the court's conclusions of law, as well as the court's findings that:

3. Deputy N. Bohanek observed that the vehicle's steering column had been damaged and the vehicle was operating without a key. Deputy Bohanek informed Deputy Dawson of the observation and suspicion that the vehicle might be stolen.⁵
4. The defendant, a passenger in the vehicle, was asked for identification pursuant to the deputies' articulable suspicion that he may be riding in a stolen vehicle.
5. That it is the standard practice of law enforcement to run a name check on passengers in a vehicle where there is reasonable suspicion that the parties may be engaged in criminal activity.

CP 123. *See also* RP 14-15.

The traffic stop made by Deputies Dawson and Bohanek happens to be a circumstance where each Deputy separately found a reasonable basis

⁵ A notation made on the court's findings says, "Defense objects as neither report indicates Deputy Bohanek told Deputy Dawson. Deputy Dawson clearly said in report and PC affidavit that she was checking for licensed driver & that is why she requested names." (Emphasis in original.)

to conduct further investigation and thereby extend the traffic stop. Deputy Dawson was handed an identification card rather than a driver's license by Donny Carson, and when Mr. Carson admitted to possibly having a warrant and/or a suspended license, Deputy Dawson was justified in checking Mr. Carson's status. Meanwhile, Deputy Bohanek observed indications that the vehicle driven by Mr. Carson could possibly be stolen, and so Deputy Bohanek was justified in asking further questions of the occupants of the vehicle, to either confirm or dispel that suspicion. This claim fails.

B. THE EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT TO PROVE THAT THE DEFENDANT POSSESSED METHAMPHETAMINE AND A SWITCHBLADE KNIFE.

Mr. Davison challenges the sufficiency of the evidence supporting his convictions for possession of a controlled substance and possession of a dangerous weapon. The purpose of a review of the sufficiency of the evidence is "to guarantee the fundamental protection of due process of law." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). "The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the *light most favorable to the state*, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (emphasis added). When the sufficiency of the evidence is challenged in a criminal

case, all reasonable inferences from the evidence must be drawn in favor of the state and interpreted most strongly against the defendant. *Id.* A claim of insufficiency admits the truth of the state's evidence and all inferences that reasonably can be drawn therefrom. *Id.* "Specifically, following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law." *State v. Homan*, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014) (citing *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005)).

Possession of a controlled substance is unlawful under RCW 69.60.4013. Possession may be actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). A person has actual possession when he or she has physical custody of the item and constructive possession when he or she has dominion and control over the item. *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002); *State v. Shumaker*, 142 Wn. App. 330, 174 P.3d 1214 (2007); *State v. Olivarez*, 63 Wn. App. 484, 820 P.2d 66 (1991). Dominion and control need not be exclusive in order to sustain a conviction for a crime requiring possession of a contraband item. *State v. Weiss*, 73 Wn.2d 372, 438 P.2d 610 (1968).

Constructive possession occurs when the person has dominion and control over the item enabling that person to immediately convert the item

to actual possession. *Jones*, 146 Wn.2d at 333. However, knowledge of the presence of a drug is by itself insufficient to prove dominion and control. *State v. George*, 146 Wn. App. 906, 923, 193 P.3d 693 (2008) (citing *State v. Davis*, 16 Wn. App. 657, 659, 558 P.2d 263 (1997)). In addition, mere proximity to the contraband is insufficient to show constructive possession; “it must be established that the defendant exercised dominion and control over either the drugs or the area in which they were found.” *State v. Mathews*, 4 Wn. App. 653, 656, 484 P.2d 942 (1971); *see also*, *State v. Spruell*, 57 Wn. App. 383, 388-89, 788 P.2d 21 (1990); *State v. McCaughey*, 14 Wn. App. 326, 329, 541 P.2d 998 (1975).

To determine whether a defendant was in constructive possession of an object, the court looks to the totality of the circumstances. *State v. Partin*, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977). Judge Tompkins, in her Findings of Fact and Conclusions of Law, made at the conclusion of the defendant’s trial, found:

9. Deputy Bohanek confirmed that a felony warrant for Mr. Davison’s arrest was issued by the U.S. Marshal Service. After receiving confirmation of the warrant, Deputy Dawson placed Mr. Davison under arrest.

10. After Mr. Davison was arrested and exited the vehicle, Deputy Bohanek recovered a 6"x4"x3" brown zippered case⁶ and small red digital camera on the seat

⁶ No witness at trial testified to the dimensions of the brown zippered case. Deputy Bohanek estimated the case to be 6"x4"x3" in his report, *see* CP 38,

where Mr. Davidson [*sic*] had been sitting. The camera was not owned by Mr. Davison. The Deputy testified that Mr. Davison would have been sitting directly on top of the case.

11. Upon arrival at the county jail, and during the booking inventory, Corrections Officer Propp discovered a plastic bag with a white crystalline substance inside, which was inside the brown zippered case found on Mr. Davison's seat.

12. Also contained in the zippered case was a spring operated knife, known commonly as a switch blade.

13. The white crystalline substance found in the bag was analyzed and determined to be methamphetamine by a certified chemist at the Washington State Patrol Crime Lab.

...

15. Mr. Davison admitted to a history of methamphetamine use, having failed urine analysis testing while on federal probation, subsequent to his release from prison.

CP 136-137. These findings, and the evidence in support, given the totality of the circumstances, are sufficient to establish the defendant's guilt beyond a reasonable doubt.

Here, a brown pouch or bag (containing methamphetamine and a switchblade) was found on the front passenger seat, precisely where the

attached to Defendant's Motion to Suppress. Both Judge Cozza and Judge Tompkins then used these dimensions in their respective Findings of Fact. CP 123, 136.

defendant was sitting. A digital camera was found alongside the bag as well. The combination of the bag and the camera makes it unlikely that the defendant did not know he was sitting on anything. Regardless of the defendant's physical size, it is reasonable to conclude he knew there was something under him. This was not a situation where it is alleged that the defendant was sitting on a couple of loose pills, as occurred in the case cited by the defendant. *See* Br. of Appellant at 15-16. This was not a case where it is alleged that the bag was found under a seat or in the trunk of the car. Rather, the defendant was clearly in possession of the bag based on its location, under him on his very seat.

In addition, the defendant admitted that he was a habitual user of methamphetamine. The defendant testified that after his release from federal prison, he "used it [methamphetamine] here and there." RP 191. His frequent use resulted in three separate probation violations⁷ due to "dirty UAs" for methamphetamine. RP 190-191. For each violation, the defendant was incarcerated for "eight months apiece." RP 190. His use of methamphetamine, then, was more than "use on a prior *occasion*." Br. of Appellant at 15 (emphasis added). The defendant used methamphetamine regularly, over many years.

⁷ Indeed, a representative of Pretrial Services testified the three probation violations occurred in 2011, 2013, and 2014. RP 171.

A known methamphetamine user sitting directly upon on a bag containing methamphetamine (and a switchblade) is enough to show the defendant possessed both items. When viewed in the light most favorable to the state, this evidence is sufficient to support the trial court's findings of fact and the defendant's convictions.

V. CONCLUSION

Law enforcement had a reasonable basis to conduct further investigation into the traffic stop involving the defendant. The State presented sufficient evidence that the defendant unlawfully possessed a controlled substance and a dangerous weapon. The State respectfully requests this Court affirm the defendant's convictions.

Dated this 11th day of September, 2017.

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I certify under penalty of perjury under the laws of the State of Washington, that on September 12, 2017, I e-mailed a copy of Brief of Respondent in this matter, pursuant to the parties' agreement, to:

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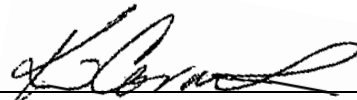
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